IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/04/2004

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.R. SINGHARAVELU

Habeas Corpus Petition No. 4 of 2004

M. Asik Ali,
S/o. S. Mohammed Ali,
16, Gandhi Road, Gill Nagar Extn.,
Choolaimedu, Chennai. .. Petitioner.

-Vs-

1. The State of Tamil Nadu,
represented by Secretary to Government,
Public (SC) Department,
Fort St. George, Chennai-9.

3. Union of India,
represented by Secretary to
Government, Ministry of Finance,
Department of Revenue, COFEPOSA Unit,
Janapath Bhawan, 6th Floor, Janpath,
New Delhi. .. Respondents.

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Habeas Corpus, calling for the records relating to the order of the first respondent made in G.O.SR 1/65-6/2001 dated 15-2-2001, quash the same and direct the respondents to produce the body of the person of detenu Mohammed Ali, son of O. Abdul Subhan, now detained in the Central Prison, Chennai under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act and set him at liberty.

!Mr. B. Kumar, Senior counsel for Mr.M. Abdul Nazeer:- For petitioner.

^Mr. A. Navaneetha Krishnan, Addl. Public Prosecutor:- For 1st Respondent.

Mrs. Vanathi Srinivasan, Addl.Central Govt., Standing counsel:- For 2nd Respondent.

:ORDER

(Order of the Court was made by P. Sathasivam, J.,)

Son of the detenu-Mohammed Ali challenges the detention order of the first respondent dated 15-2-2001, passed under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act ('COFEPOSA' in short) in this petition. The detenu-Mohammed Ali was a passenger intending to go to Kuala Lumpur by Air India flight. He was intercepted by Customs Officer. From his checked in baggage US Dollars 11700 equivalent to Rs.5,22,240/- was recovered. They have also claimed to have recovered Indian currencies of Rs.1 lakh and they were seized. A statement was recorded from the detenu to the effect that he is a licensed manpower consultant that the licence was granted by Ministry of Labour of Central Government, that he had won a contract with M/s. W.R.P. Company, Malaysia to send as many 747 workers, that he had already sent 40 workers. For the next batch, he had collected Rs.17,000/- from each to meet the expenses like visa, medical check up, initial payment to provident fund, etc., and when he was taking the currencies, he was apprehended, arrested and remanded to custody.

2. The detention order was passed to prevent the detenu from smuggling goods. The detenu filed a writ petition before this Court seeking an order not to detain him under COFEPOSA. The said writ petition was dismissed by this Court and ultimately, in Special Leave Petition by an order dated 13-10-2003, the Honourable Supreme Court passed an order permitting withdrawal of his S.L.P. with liberty to raise all grounds after surrender. Thereafter, on 21-10-2003, the detenu surrendered before the Additional Chief Metropolitan Magistrate, Economic Offences-I, Egmore, Chennai. He was remanded in pursuance of the order of the Supreme Court.

3. Heard Mr. B. Kumar, learned senior counsel for the petitioner, Mr. A. Navaneethakrishnan, learned Additional Public Prosecutor for first respondent and Mrs. Vanathi Srinivasan, Additional Central Government Standing counsel for 2nd respondent.

4. Though several contentions have been raised challenging the impugned order of detention, Mr. B. Kumar, learned senior counsel for the petitioner at the foremost, contended that a legible copy of remand order dated 10-12-2000, a relied upon document by the detaining authority, was not furnished to the detenu which prevented him in making effective representation and infringes the right guaranteed under Article 22 (5) of the Constitution of India. In support of his contention, straight away he took us to the relevant portion supplied to the detenu. It is seen that the sponsoring authoritySuperintendent of Customs, Prosecution Unit (AIR), Customs House, Chennai-1 filed an application before the Additional Chief Metropolitan Magistrate-E.O.1, Egmore,Chennai seeking an order to remand the detenu to judicial custody. The said application is dated 10-12-2000. On the same day, the learned Additional Chief Metropolitan Magistrate-E.O. I, Egmore, Chennai, passed an order remanding him to judicial custody till 22-12-2000. The application of the Superintendent of Customs and the order of the learned Additional Chief Metropolitan Magistrate dated 10-12-2000 finds a place at pages 55,56, and 57 of the paper book supplied to the detenu. By drawing our attention to the said order of remand dated 10-12-2000, Mr. B. Kumar,

learned senior counsel, would contend that inasmuch as the said document is a relied upon document by the detaining authority, the detenu is entitled to a legible copy of the same to make an effective representation. According to him, the said order, which is a hand-written order passed by the learned Judicial Officer, is not legible and readable. In the light of the said objection, we also perused the copy of the said order furnished to the detenu, and placed before this Court as well as the copy of the same available with the Additional Public Prosecutor. The hand written order dated 10-12-2000 is not legible and readable. Though learned Additional Public Prosecutor is in a position to read one or two sentences here and there, admittedly he could not able to read the entire order. Para 1 sub-clause (iv) of the grounds of detention refers to the remand order of Additional Chief Metropolitan Magistrate dated 10-12-2000. The following reference found in that paragraph is extracted hereunder:

"Para 1(iv) Accordingly, you were arrested on 10-12-2000 by the Customs Department and produced before the Addl. C.M.M.,E.O.1, Chennai at his residence who remanded you to judicial custody till 2 2-12-2000. At the time of remand you have not made any complaint against the officers and you told that 1000 Dollars of Basic dollar Quota was also seized by the Official. Your passports are ordered to be retained in the Court."

The remand order is not a referred document. On the other hand, undoubtedly, it is a relied upon document by the detaining authority while passing the order of detention. In such a circumstance, the detenu is entitled not only a copy of the said order, but the same must be legible and readable in order to make effective representation to the concerned authority.

5. It is also brought to our notice that after knowing that the remand order supplied to the detenu is not legible, the detenu himself made a representation from Central Prison, Chennai-3 on 1 8-11-2003 to the Government requesting for supply of clean readable copies of pages 54, 57, 62, 63 and 64 of the documents. Unfortunately, the Government in their letter dated 3-12-2003, sent a reply to the detenu stating that only clear copies of the above pages have been supplied to him. We have already referred to the difficulties expressed by the learned Additional Public Prosecutor in reading the copy of the order dated 10-12-2000 supplied to the detenu. In spite of best efforts, we also could not read the entire order. As rightly argued by the learned senior counsel for the petitioner, even persons conversant with this subject are not in a position to read the order of remand which is a relied upon document; hence it would be difficult for a person like detenu to read and understand the illegible copy in order to make an effective representation. It is worthwhile to refer the decision of the supreme Court in Dharmista Bhagat v. State of Karnataka, reported in 1990 Supreme Court Cases (Cri) 39. While considering non-supply of legible, vital document in spite of the request made, after referring to Article 22 (5) of the Constitution of India, Their Lordships have held: (para 5)

"5....Therefore, it is imperative that the detaining authority has to serve

the grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention and referred to in the list of documents accompanying the grounds of detention in order to enable the detenu to make an effective representation to the Advisory Board as well as to the detaining authority. Therefore, the non-supply of legible copy of this vital document i.e. panchnama dated February 12, 1988 in spite of the request made by the detenu to supply the same renders the order of detention illegal and bad. This Court in Mehrunissa v. State of Maharashtra [(1981) 2 SCC 709]: [1981 SCC (Cri) 592] has o bserved that: (SCC p.710)

"The detenu was entitled to be supplied with copies of all material documents instead of having to rely upon his memory in regard to the contents of the documents. The failure of the detaining authority to supply copies of such documents vitiated the detention, as has been held by this Court in the two cases cited by counsel. The detenu is, therefore, entitled to be released. He is accordingly directed to be released forthwith."

We have already held that the remand order dated 10-12-2000 supplied to the detenu is illegible and in spite of his request for supply of a clean and readable copy thereof, the same was turned down by the Government which cannot be accepted. We are satisfied that the detenu was denied the opportunity of making effective representation and as such, there was a clear contravention of the right guaranteed by Article 22 (5) of the Constitution. The order of detention is, therefore, set aside and the petition is allowed. The detenu is directed to be set at liberty forthwith from the custody unless his detention is required for any other cause.

6. Before parting with this case, we are constrained to express our displeasure that most of the Remand or Remand Extension orders passed by the Judicial Officers happen to be hand written orders and they are not legible and readable. We are aware of the fact that the accused persons are often being taken to the residences of the Judicial Officers even at late hours for the purpose of getting remand and they may not have sufficient assistance to get their orders typed. However, it is relevant to note that in matters pertaining to arrest and preventive detention etc., the remand order is very much relied on by the detaining authority. In such a circumstance, the accused/detenus are entitled copy of the same and it should be legible and readable, otherwise it will not serve any purpose. One cannot think or presume that furnishing of such copy of order is an empty formality in order to mere comply with the statutory provisions of law. In this case, the remand order is a hand written order passed by the Additional Chief Metropolitan Magistrate, E.O.1. The Judicial Officers make sure that the Remand or Remand Extension orders are legible and readable, even if they are hand written ones. Unfortunately, neither the detaining authority nor the persons who assisted the authority nor the Government had taken care to furnish legible and readable copy to the detenu, who is not only an aggrieved person, but also entitled the same as per law. At least, on receipt of the representation from the detenu, the authority concerned should have taken some efforts to secure a legible copy with the assistance of the judicial officer concerned. We hope and expect that all judicial officers, particularly those who are dealing with

criminal matters while passing the order of remand or extending the remand, ensure that their orders are legible and readable.

(P.S.J.,) (S.R.S.J.,)

R.B.

Index:- Yes.
Internet:- Yes.

To:-

1. The State of Tamil Nadu,
represented by Secretary to Government,
Public (SC) Department,
Fort St. George, Chennai-9.

3. Union of India,
represented by Secretary to
Government, Ministry of Finance,
Department of Revenue, COFEPOSA Unit,
Janapath Bhawan, 6th Floor, Janpath,
New Delhi.

3. The Superintendent, Central Prison, Chennai.

4. To the Public Prosecutor, High Court, Madras.